IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 317 of 1988

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

C.C. NARSINGHANI.

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 317 of 1988

MR GM JOSHI for Petitioner No. 1

MR DIPEN DESAI Ld. AGP for Respondent No. 1

MR ANANT S DAVE for Respondent No. 1

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 17/08/2004

ORAL JUDGEMENT

1. Heard the Learned advocates. The petitioner is a retired Government servant. The petitioner has

challenged the initiation of disciplinary action against the petitioner by issuing charge-sheet on 31st December, 1987.

2. The petitioner retired from the Government service as Chief Engineer in the year 1985. On 31st December, 1987, the disciplinary proceeding was initiated against the petitioner under Rule 189-A of Bombay Civil Services Rules, 1959 for the alleged act of misconduct by which a loss of Rs. 8,12,705/- was caused to the State Government. Feeling aggrieved, the petitioner has preferred the present petitioner.

3. Institution of disciplinary proceeding has been challenged only on the ground that aforesaid Rule 189-A does not permit institution of disciplinary proceeding against the retired Government servant in respect of any event which took place more than 4 years before such institution. It is the claim of the petitioner that the incident in question took place in the year 1982-83. The departmental proceedings instituted on 31st December, 1987, four years after the date of the incident, is expressly barred under the aforesaid Rule 189-A.

4. In the counter affidavit, it is stated that by communication dated 30th July, 1984, the petitioner had sought approval of the rate for additional work. Such approval was granted on the basis of the facts mentioned by the petitioner which were found to be false and misleading. Thus, the petitioner is alleged to have sought approval on the basis of misleading facts which resulted into a loss of Rs. 8,12,705/- to the State Government.

5. Evidently, the incident in question took place on 30th July, 1984 and, thereafter. The disciplinary proceeding in respect of the said incident has been instituted on 31st December, 1987 i.e. well within four years of the date of incident. The aforesaid Rule189-A empowers the Governor, inter alia, to withhold or withdraw pension or any part of it, if in departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service. Clause (b) of the said Rule 189-A provides that such departmental proceeding if not instituted while the Government servant was in service, shall not be in respect of any event which took place more than 4 years before such institution. Thus, institution of departmental proceeding against a retired Government servant for an incident which took place more than 4 years prior to such institution is expressly barred. It,

therefore, implies that such disciplinary proceeding can be instituted against the retired Government servant within 4 years of the date of the incident. In the present case, the departmental proceeding in question has been instituted within 4 years from the date of the incident. Therefore, it was within the power of the Government to institute the departmental proceeding in question against the petitioner.

5. It may, however, be noted that the present petition came up for hearing on 25th January, 1988. On the said date, notice was ordered to be issued to the State Government and by way of ad interim order, the impugned departmental proceeding was stayed. The petition came to be admitted to final hearing on 8th January, 1991. Though ad interim order was granted on 25th January, 1988, neither the State Government moved for vacation of ad interim order nor did it contest the petition at admission hearing. The counter affidavit has been made as late as on 26th July, 2001. The result is that the disciplinary proceeding instituted on 31st December, 1987 has not proceeded further till the date i.e. almost 20 years after the retirement of the petitioner from service. Considering the said delay, the continuance of the disciplinary proceeding against the petitioner, who has retired from service in the year 1985, would not be justiciable or fair.

6. In above view of the matter, the petition is allowed. The charge-sheet dated 31st December, 1987 issued against the petitioner is quashed and set aside. Rule is made absolute. The parties shall bear their own cost.

(Ms. R.M. DOSHIT, J.)
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